

Comment on Proceeding 14-28 *Protecting and Promoting the Open Internet*

May 10, 2014

James L Alberi
73 Mission Hills Court
Holmdel, NJ 07733

Chairman Tom Wheeler and FCC Commissioners
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Subject: I oppose the proposed Internet “Fast Lane” FCC Rules; reclassify internet service providers as Telecommunications companies under Title II of the 1996 telecommunications act.

I am writing to you today as someone with 43 years of involvement with computers, computer-science and networking research. My first computer experience was at Columbia University as a high-school senior in a weekend educational program, and it has continued through a Ph.D. and as a researcher at Brookhaven National Lab, Bell Labs and its successor companies. I am acutely concerned about the current situation with the proposed FCC “internet fast lane” rules and that may arise from the recent Netflix/Comcast business transaction.

In 2009 the FCC drafted similar rules because of the events surrounding Comcast and Comcast’s arbitrary throttling of peer-to-peer traffic; in that case the FCC lost their case when the DC district court ruled that Comcast is classified as an “information service.” Recently, the FCC finished writing the “Open Internet” rules and once again the FCC was sued by Verizon. The FCC lost their case once again – in both of these cases the court urged the FCC to reclassify these ISPs as a Title II communications company if the office of the FCC was serious about drafting rules that these companies must follow.

I’m aware that Title II has some stringent rules and that these rules may not all be applicable to internet service providers like Verizon, AT&T and Comcast. However, I would remind you that the FCC has the power of forbearance; the office can choose what rules will be imposed. Were these internet service providers classified as “telecommunications services”, *as the FCC has been encouraged to do by these two court cases*, then it does not have to enforce *all* the rules under Title II.

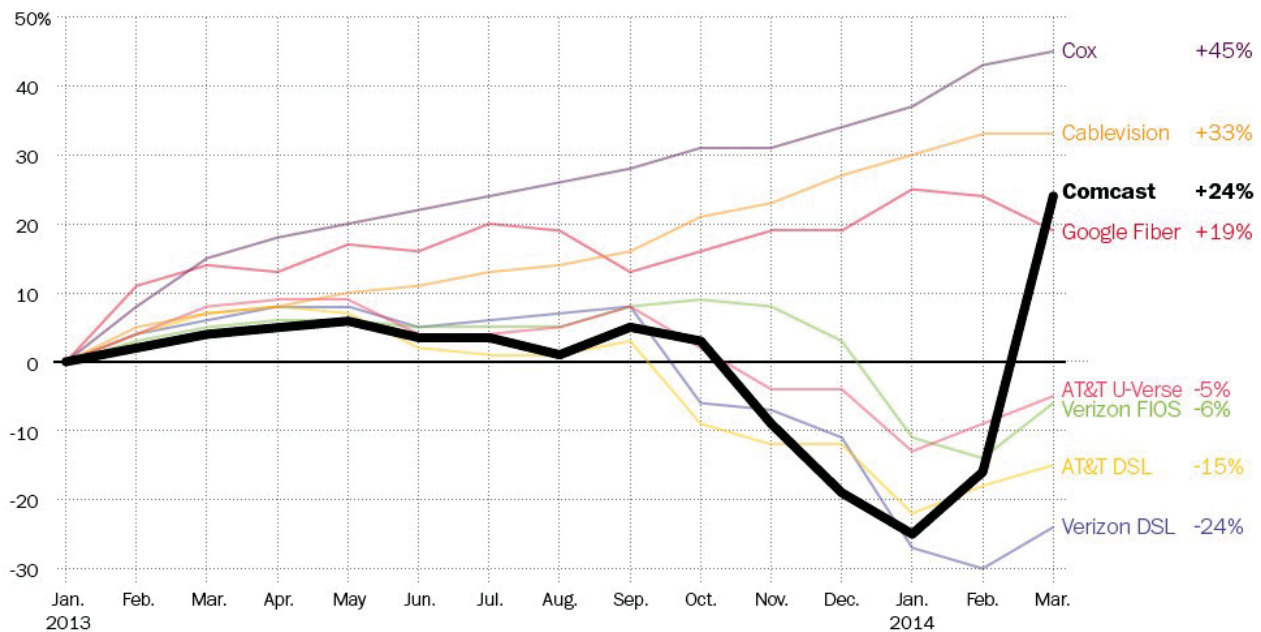
The fact that the court has taken notice of the inherent contradiction in your regulatory posture and even has given guidance about what is legal under the statutes makes your stance even more inexplicable. By going into further uncharted legal territory, aren't you risking ongoing legal battles

with the service providers that lead to further delay and confusion in resolving this issue?

As a Comcast customer with a major interest in your decision, I believe that Comcast has been dishonest in its claims of inadequate bandwidth leading to the necessity of charging Netflix for access. This dishonesty is especially galling as I believe that I have purchased a 30 Mbit/sec connection perhaps subject to a 250 to 300 GB cap that is **not** subject to the throttling of independent service providers.

Please see the graph below from the Washington Post published on 24 April 2014. My conclusion about the rapid drop in download speed and the subsequent meteoric rise is that Comcast has been using its network engineering expertise to throttle Netflix as a tactic to extort increased revenues. My professional experience informs me that such a rapid increase in bandwidth provisioning is impossible in the face of serious underprovisioning. You may notice the AT&T and Verizon seem to have engaged in similar actions, while Cox, Cablevision and Google have not. Could it be that Netflix enthusiasts are concentrated only on AT&T, Verizon and Comcast or is the above explanation more likely?

% change in Netflix download speed since Jan. 2013, by I.S.P.



SOURCE: Netflix
GRAPHIC: The Washington Post. Published April 24, 2014

I am confident that should the appropriate government agencies investigate the particulars of Comcast's

activities in this case, they would have an open-and-shut antitrust case. To use a telephone analogy, this is no different than a cellular telephone provider charging a call recipient "extra" to "help prevent the call from being dropped."

This is exactly the same type of abusive conduct that the FCC tried to deal with in the court cases in 2009 and again with Verizon more recently.

Please, halt what is being done with these “internet fast lane” rules, and simply reclassify internet service providers as Telecommunications companies under Title II of the 1996 telecommunications act. It is a faster, simpler, and more effective way to accomplish your goals.

Sincerely,

James L. Alberi, Ph.D.